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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,343	09/23/2003	Chen-Hung Huang	MR2713-57	3405
4586	7590	12/28/2006		
ROSENBERG, KLEIN & LEE			EXAMINER	
3458 ELLICOTT CENTER DRIVE-SUITE 101			LEVY, NEIL S	
ELLICOTT CITY, MD 21043				
			ART UNIT	PAPER NUMBER
			1615	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/28/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/667,343	Applicant(s) HUANG, CHEN-HUNG	
	Examiner NEIL LEVY	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear if "including" permits of other than talcum powder; if so the disclosure provides no other "non-toxic" particles, and does not define non-toxic. If the talcum powder is non-toxic to pets or children, so specifying in the claim would clarify. Talcum powder consisting of "non-toxic" solid particles would overcome the rejection, but support must be indicated. We do not see it in the specification, but manufacturers MSDS or other data of the talcum powder used before filing date, if shown to be free of toxicants would support such language. The descriptive language is difficult to permit recognition of what applicant is claiming. Reference to number of applicant's invention of Figures 5-10 may help describe the intended device as claimed. It is not clear how "predetermined" amount (claim 1) or position (claim 3) is identified, and to what purpose. In the case of claim 1; is the amount of powder provided as to present a physical barrier to ant travel?

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated KUWAZURU et al 5531981, with evidence of Nitikhunkasem et al 6048549.

The instant talc (column 6, lines 24-33) powders as the "numerous non-toxic solid particles" instantly claimed, in the open language, "comprising and including", permitting therefore toxic compounds, are provided in devices as are instantly claimed (Figure 1). The example used dried sand-However, talcum powder is an equivalent, as silica as indicated at column 6, lines 24-33. Table 2 shows prevention of passage of termites claimed is a composition, not a method, thus, the composition of talc and the claimed device are anticipated, since the termite treatment does not exclude ants.

A plane section extends toward, and constitutes also a container of instance claim 3 and 4, as seen as "Glass tube" of figure 1.

Dust proof lids are the aluminum foil of Figure 1 Nitikhunkasemteach that prickly heat powder is talc-the instant talcum powder (column 2, lines 33-36).

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by MYLES 5609879 . Ants and other social insects, termites (column 1, lines 45-55) are controlled with devices as are instantly claimed (Figure 1-6, 8). Toxin carriers (column 6, lines 33-35) must be non-toxic, and include talcum powder (column 7, lines 40-44). The devices of MYLES include annular bodies of receptacles adhering to which are talcum powder as part of carriers. The instant composition/device is thus met, whether or not ants are prevented from crawling anywhere.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by


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See Fig. 1,2 & the Talcum Powder, col. 2, line 35 in the receptacle, 14. No patentable weight is given to future intended use of the device to prevent ants, or to what else talcum powder can be used for —(prickly heat of instant claim 5).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


NEIL LEVY
Primary Examiner
Art Unit 1615